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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		67,108-089; Kong 5-10-5-4	
<b>CERTIFICATE OF FACSIMILE</b> I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>11-14-07</u> Signature <u>Theresa M. Palmateer</u> Typed or printed name <u>Theresa M. Palmateer</u>		Application Number <u>10/822,434</u>	Filed <u>04/12/2004</u>
		First Named Inventor <u>Hongwei Kong</u>	
		Art Unit <u>2617.</u>	Examiner <u>Elcenko, Eric J.</u>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. <u>37,139</u> Registration number</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>Signature <u>David J. Gaskey</u> Typed or printed name <u>(248) 988-8360</u> Telephone number <u>14 Nov 2007</u> Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application: Hongwei Kong  
Serial No.: 10/822,434  
Filed: April 12, 2004  
Group Art Unit: 2617  
Examiner: Elcenko, Eric J.  
For: SECTOR SWITCHING DETECTION METHOD

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests Pre-Appeal Brief Review of the rejection in the Final Office Action mailed on July 27, 2007, because there is no *prima facie* case of anticipation.

The Examiner has rejected claims 20-23, 25, 26, 29 and 30 under 35 U.S.C. §102(e) based upon the *Knisely, et al.* reference. There are several limitations of Applicant's claims that are completely missing from the *Knisely, et al.* reference and, therefore, there is no *prima facie* case of anticipation.

The Examiner contends that paragraphs 12-15 of the *Knisely, et al.* reference includes "determining a number of frames within the window that contains the sector switching indicator." There is nothing in the *Knisely, et al.* reference that corresponds to determining a number of frames within a window (assuming that a window of multiple frames is used for the determinations made in the *Knisely, et al.* reference). Paragraph 12 describes non-switch frames that do not have a switching indicator. Those cannot possibly qualify as a basis for determining

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a number of frames containing a sector switching indicator. Paragraph 13 indicates that a mobile station may transmit a switch frame that includes a fixed and known value in a particularly identified slot of a frame. Paragraph 13 does indicate that "the location and number of switch indication slots within a 20 ms frame may be changed based on a directive from the base transceiver station." (Page 3, lines 7-10) It is important to note that a number of slots within a frame is not the same thing as a number of frames. Paragraph 13 says nothing about determining a number of frames that have a sector switching indicator. Paragraph 14 merely indicates that a mobile station can identify a target base station. Paragraph 15 only describes that Figure 1 shows switch frame and non-switch frame formats.

There is nothing in any of paragraphs 12-15 that in any way indicates that a number of frames is determined as suggested by the Examiner. Because that portion of Applicant's claims is completely missing from the *Knisely, et al.* reference, there is no *prima facie* case of anticipation.

Additionally, the Examiner suggests that paragraph 36 of the *Knisely, et al.* reference corresponds to determining whether a sector switch is desired based on the determined number of frames and a decision metric. Because the *Knisely, et al.* reference does not teach determining a number of frames within a window that contain a sector switch indicator, it is impossible for it to determine whether a sector switch is desired based on a determined number of frames. The Examiner refers to paragraph 36 of the *Knisely, et al.* reference as allegedly teaching such a determination whether a sector switch is desired. What paragraph 36 actually says is that a base station controller (BSC) "pools network parameters from the various BTSs and determines the current status of the mobile using the parameters passed to it from the various BTSs." (Lines 7-9) The BSC in the *Knisely, et al.* reference never determines how many frames are considered

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within a particular "window" of frames and does not use any such number for making its determination. The *Knisely, et al.* reference is silent regarding determining how many frames are within a window and using such a determination for deciding whether a sector switch is desired. without that, there is no *prima facie* case of anticipation.

The rejection under 35 U.S.C. §102(e) must be withdrawn. This case should be allowed.

Respectfully submitted,

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By: 

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Dated: November 14, 2007

CERTIFICATE OF FACSIMILE

I hereby certify that this Pre-Appeal Brief Request for Review, relative to Application Serial No. 10/822,434 is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on November 14, 2007.

  
Theresa M. Palmateer

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